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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/576,915 | 04/24/2006 | Joseph Anthony Lupia | HC/1-22973/A/PCT | 7496 |

324 7590 03/23/2009

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| EXAMINER |
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DELCOTTO, GREGORY R

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| ART UNIT | PAPER NUMBER |
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1796

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| MAIL DATE | DELIVERY MODE |
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03/23/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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|------------------------------|---|------------------------------------|--|
| Office Action Summary | Application No. 10/576,915 | Applicant(s) LUIA ET AL. | |
| | Examiner Gregory R. Del Cotto | Art Unit 1796 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-10,12-17,19-21,23-32,34-36 and 38-40 is/are pending in the application.
- 4a) Of the above claim(s) 13-17,31,32,34-36 and 38-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-10,12,19-21 and 23-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) See Continuation Sheet are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/09, 7/06</u> . | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims subject to restriction and/or election requirement are 1,3,5-10,12-17,19-21,23-32,34-36 and 38-40.

DETAILED ACTION

1. Claims 1, 3, 5-10, 12-17, 19-21, 23-30, 31, 32, 34-36, and 38-40 are pending. Claims 2, 4, 11, 18, 22, 33, and 37 have been canceled. The preliminary amendment filed 4/24/06 has been entered.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Specification

This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required. The PCT Abstract is not sufficient.

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1, 3, 5-10, 12-17, 19-21, and 23-30, drawn to a stabilized composition.

Group II, claim(s) 31, 32, 34-36, 38, and 40 drawn to a method of stabilizing a body care product, household product, textile or fabric.

Group III, claim(s) 39, drawn to a method for stabilizing an active ingredient.

The inventions listed as Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: Claim 1, at least, is

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anticipated or obvious over Seltzer et al (US 6,254,714) in view of WO01/36396. Consequently, the technical feature which links claims 1, 3, 5-10, 12-17, 19-21, 23-30, 31, 32, 34-36, and 38-40, a stabilized composition, does not provide a contribution over the prior art, so unity of invention is lacking.

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Embodiments wherein the stabilizing compound (b) is selected from the group consisting of compounds of Formula (A) through Formula (Z), Formula (A*) through Formula (Z*), Formula (AA) through Formula (EE) and Formula (AA*) through Formula (EE*).

Additionally, a second election is required between embodiments wherein the UV filter (c) is selected from the group consisting of dibenzoylmethane derivatives, cinnamic acid esters, camphor derivatives, and trianilino-s-triazine derivatives.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. Specifically, Applicant is required to elect one of Formula (A) through Formula (Z), Formula (A*) through Formula (Z*), Formula (AA) through Formula (EE) and Formula (AA*) through Formula (EE*) as the first elected species and one of dibenzoylmethane derivatives, cinnamic acid esters, camphor derivatives, and trianilino-s-triazine derivatives as the second elected species.

The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The following claim(s) are generic: None.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: Pursuant to PCT Rule 13.2 and PCT Administrative Instructions, Annex B, Part 1(f)(I)(B)(2), the species are not art recognized equivalents.

During a telephone conversation with Mervin Wood on March 10, 2009, a provisional election was made without traverse to prosecute the invention of Group I, claims 1, 3, 5-10, 12-17, 19-21, and 23-30 and Formula (A*) as elected species one and dibenzylmethane derivatives (c1) as elected species two. Affirmation of this election must be made by applicant in replying to this Office action. Claims 13-17, 31, 32, 34-36, and 38-40 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim

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remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3, 5-10, 12, 19-21, and 23-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to instant claim 1, this is vague and indefinite in that the claim recites a composition but also claims a “textile or fabric” as a component of the composition wherein a textile or fabric is not a component of chemical composition. Clarification is required. Note that, claims 3, 5-10, 12, 19-21, and 23-30 have also been rejected due to their dependency on claim 1.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 3, 5-10, 12, 19-21, and 23-30 are rejected under 35 U.S.C. 103(a) as being obvious over WO2004/076419 or WO03/103622, both in view of WO01/36396.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing

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that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(I)(1) and § 706.02(I)(2).

'419 teaches sterically hindered alkoxy amine and hydroxyl substituted alkoxyamine stabilizer compounds which are made water compatible via certain backbones with affinity towards water. See Abstract. Note that, the Examiner asserts that '419 teaches compounds which are the same as recited by the instant claims. See page 9, line 10 to page 12, line 35. The compositions may contain the stabilizer and additionally, ultraviolet light absorbers, benzophenones, pigments, dyes, etc. Additionally, the Examiner asserts that the disclosed stabilizer, when mixed in a composition containing any acid, would form the claimed salt of Formula (A*).

'622 teaches stabilized body care products, household products, textiles, and fabrics which contain hindered amines which are the same as recited by Formula (A*) of the instant claims. See Abstract and page 2, lines 10-20. Additionally, the compositions may contain UV absorbers, antioxidants, surfactants, etc. See page 20, lines 1-10.

'419 or '622 do not teach the use of a dibenzoylmethane derivative or a composition containing a household product, a stabilizing compound of Formula (A*), a dibenzoylmethane derivative, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

'396 teaches benzotriazole UV absorbers which may be used in the cosmetic treatment of human hair for protection against UV radiation. See Abstract. Additionally, other UV absorbers may be used such as dibenzoylmethane derivatives such as 1-(4-

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tert-butylphenyl)-3-(4-methoxyphenyl)propane-1,3-dione, etc. See page 9, line 20 to page 10, line 10. Additionally, these UV absorbers may be used in household products, skin-care preparations, natural and dyed or printed fibre materials including cellulose, etc. The UV absorbers may be used in amounts from 0.01% to 5% by weight. See page 21, line 10 to page 22, line 30.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use 1-(4-tert-butylphenyl)-3-(4-methoxyphenyl)propane-1,3-dione in the compositions taught by '419 or '622, with a reasonable expectation of success, because '396 teaches the use of 1-(4-tert-butylphenyl)-3-(4-methoxyphenyl)propane-1,3-dione as a UV absorber in similar compositions and further, '419 or '622 teach the use of UV absorbers in general.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition containing a household product, a stabilizing compound of Formula (A*), a dibenzoylmethane derivative, and the other requisite components of the composition in the specific amounts as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of '419 or '622, both in combination with '396, suggest a composition containing a household product, a stabilizing compound of Formula (A*), a dibenzoylmethane derivative, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Claims 1, 3, 5-10, 12, 19-21, and 23-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zanardi et al (US 2004/0023837), Koller et al (US 6,630,002) or Seltzer et al (US 6,254,724), all in view of WO01/36396.

Zanardi et al teach liquid compositions containing alkali or alkaline-earth hypochlorites, and possibly other active chlorine releasers such as trichlorocyanuric acid, etc., for bleaching and sanitizing fabrics. See Abstract. Note that, the Examiner asserts that Zanardi et al teach hindered amines having the same general formula as recited by Formula (A*) as recited by the instant claims. See para. 10-13. Additionally, the composition may contain surfactants, chelating agents, etc. Suitable chelating agents include nitrilotriacetic acid, ethylene diamine tetraacetic acid, etc. See paras. 17-25. Note that, the Examiner asserts that the disclosed stabilizer, when mixed in a composition containing phosphonic acid or a chelating compound would form the claimed salt of Formula (A*).

Koller et al teach a process for the staining of wood, which comprises treating the unstained wood with an aqueous preparation containing at least one dye and a dye stabilizer having the same formula as Formula (A*) recited by the instant claims. See Abstract and column 3, lines 15-60. The wood stain can also contain further additives such as UV absorbers, fungicides, etc. See column 38, lines 50-69.

Seltzer et al teach pulps or papers, especially chemimechanical pulps or papers, which still contain lignin, have enhanced resistance to yellowing when they contain an effective stabilizing amount of a hindered amine compound. This performance is

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enhanced by a coadditive such a UV absorber, etc. Note that, the hindered amine is the same as recited by Formula (A*) of the instant claims. See column 4, lines 30-69.

Zanardi et al, Koller et al, or Seltzer et al do not teach the use of a dibenzoylmethane derivative or a composition containing a household product, a stabilizing compound of Formula (A*), a dibenzoylmethane derivative, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use 1-(4-tert-butylphenyl)-3-(4-methoxyphenyl)propane-1,3-dione in the compositions taught by Zanardi et al, Koller et al, or Seltzer et al, with a reasonable expectation of success, because '396 teaches the use of 1-(4-tert-butylphenyl)-3-(4-methoxyphenyl)propane-1,3-dione as a UV absorber in similar compositions and further, Seltzer et al and Koller et al teach the use of UV absorbers in general and Zanardi et al teach the use of optional ingredients which would encompass UV absorbers.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition containing a household product, a stabilizing compound of Formula (A*), a dibenzoylmethane derivative, and the other requisite components of the composition in the specific amounts as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Zanardi et al, Koller et al Seltzer et al, all in combination with '396, suggest a composition containing a

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household product, a stabilizing compound of Formula (A*), a dibenzoylmethane derivative, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3, 5-10, 12, 19-21, and 23-30 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-14, 16-20, and 22 of copending Application No. 10/512528 in view of WO 01/36396. Claims 1-14, 16-20, and 22 of 10/512528 encompass the material limitations of the instant claims except for the inclusion of a dibenzoylmethane derivative UV absorber.

'396 is relied upon as set forth above.

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It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use 1-(4-tert-butylphenyl)-3-(4-methoxyphenyl)propane-1,3-dione in the compositions claims by 10/512528, with a reasonable expectation of success, because '396 teaches the use of 1-(4-tert-butylphenyl)-3-(4-methoxyphenyl)propane-1,3-dione as a UV absorber in similar compositions and further, 10/512528 claims the use of UV absorbers in general.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition containing a household product, a stabilizing compound of Formula (A*), a dibenzoylmethane derivative, and the other requisite components of the composition in the specific amounts as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because claims 1-14, 16-20, and 22 of 10/512528 suggest a composition containing a household product, a stabilizing compound of Formula (A*), a dibenzoylmethane derivative, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

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Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory R. Del Cotto/
Primary Examiner, Art Unit 1796

/G. R. D./
March 15, 2009

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